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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,764

04/17/2006

Gary Steven Ungless

R&G-108

3763

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EXAMINER

GEDEON, BRIAN T

ART UNIT

PAPER NUMBER

3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/531,764

Applicant(s)

UNGLESS ET AL.

Examiner

Brian T. Gedeon

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3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-33 and 36-40 is/are rejected.
- 7) ☒ Claim(s) 34 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/17/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 23-25, 31-34, and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Del Mar et al. (US Patent no. 6,117,077).

In regard to claims 23, 25 and 39, Del Mar et al. disclose an ambulatory physiological recording device that has a housing 10 provided with several adhesive electrode pads 12, 14, and 16. The housing 10 is coupled to the electrode pads 12, 14, and 16, col 5 lines 4-6, which substantially anticipates the “support means for attaching the monitor device to adhesive electrodes.” Sensors 30, 32, and 34 reside in electrode pads 12, 14, and 16, col 5 lines 26-33, and can be utilized to record any bioelectric potentials, such as ECG, EEG, or EMG, col 7 lines 55-59. The housing 10 is connected to three electrodes, but has means for electrically connecting additional electrodes to the recorder housing, figures 4 and 5. The housing 10 contains a printed circuit board 28 that contains a microprocessor or central processor chip, col 5 lines 34-52, in which flash memory stores physiological data.

In regard to claim 24, Del Mar et al. in figures 4 and 5, the housing 10/100 an electrical sockets 120 and 102 for connecting additional electrodes. Socket 102 connects to a lead 104 that couples another electrode 140 to the housing 100.

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In regard to claim 31, physiological data is recorded in one or more flash memory chips 54 and 56, col 5 lines 39-40.

In regard to claim 32, the Examiner considers this to be a component of ECG data.

In regard to claims 33 and 40, the system described by Del Mat et al. contains transducers for acceleration, activity, and body movements, col 7 lines 61-62.

In regard to claim 36, an output port 220 allows for stored data to be passed out to a personal computer, col 9 lines 2-5.

In regard to claim 37, figures 3 and 4 shows the device mounted on the user's chest, col 5 lines 53-63. The Examiner contends that the acceleration transducer could be used to monitor any body movements, col 7 lines 61-62.

In regard to claim 38, it seems inherent from the embodiments described by Del Mar et al. in figures 3 and 4, that the device housing 10 would be of a comfortable weight in order for the user to wear it on his/her chest.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mar et al. (US Patent no. 6,117,077).

In regard to claims 26-30, Del Mar et al. substantially describes the invention as claimed, however does not describe the physical dimensions of the components. However it would have been obvious to one of ordinary skill in the art that the invention described by Del Mar et al. would perform equally as well as the invention described by Applicant since the size of the components would not effect the functioning of the device, and it is inherent if not obvious that the invention of Del Mar et al. is constructed of a size that is reasonably comfortable to wear since Del Mar et al. suggest that the system can be covertly and comfortably held in place under the clothing, abstract.

Allowable Subject Matter

3. Claims 34 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Ohtake (US Patent no. 5,483,967) discloses an ambulatory bioelectrical signal recording device.

5. Japanese patent JP 62-202804 listed on PTO form 1449 was not considered due to lack of suitable English translation.

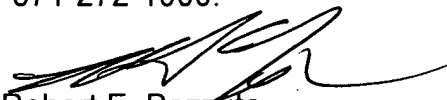
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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272 3447. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272 6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian T. Gedeon
Patent Examiner
Art Unit 3766



Robert E. Pezzuto
Supervisory Patent Examiner
Art Unit 3766

BTG